

1 rights with Comcast?

2 A We do. We are currently a  
3 licensee for one of the packages for  
4 Wimbledon. And, you know, I -- I mean, this  
5 is something that I think needs to be kept --

6 Q All right.

7 A This is sort of a business issue,  
8 but I think I can say broadly that we have  
9 been -- that there are multiple packages, and  
10 that all of them are coming up for renewal in  
11 the next -- soon, I will say, without being  
12 specific, for the press purposes.

13 And Wimbledon is obviously very,  
14 very important to us. We have had a great  
15 relationship with the Wimbledon, and they told  
16 us -- the club who licenses the rights has  
17 told us that they are speaking to Comcast  
18 about not only renewing the NBC relationship,  
19 which by the way has been very good with us as  
20 well. We have had a great relationship up  
21 until now with NBC.

22 We actually produce the French

1 Open for NBC. They have a few hours, and we  
2 actually produce that for them. So up until  
3 now it has been a wonderful relationship.

4 But the cable part, which is many,  
5 many, many hundreds of hours is coming up for  
6 grabs, and they have told us that we are now  
7 competing and we are -- with Versus, which is  
8 the owned network of Comcast, for those future  
9 rights.

10 JUDGE SIPPEL: Now, when is the  
11 Davis Cup played? I'm sorry, I've got the  
12 dates for the other ones, but when is the  
13 Davis Cup played?

14 THE WITNESS: It is actually  
15 played all year long. It is a series of  
16 contests that starts towards the beginning of  
17 the year, and the finals happen in the fourth  
18 quarter. So you have about I believe it's 16  
19 teams that play around the world.

20 And by the way, there is a women's  
21 version of the Davis Cup. The Davis Cup is  
22 the men's. The women's is called the Fed Cup,

1       so -- Venus Williams was just on the team for  
2       us, which we had on our air a couple of weeks  
3       ago. And it starts in the beginning of the  
4       year, and it is played up until the final  
5       contest to find out who the winning team of  
6       the world is at the end of the year. Spain is  
7       going to be tough to beat. They have got a  
8       good team this year, so we'll see.

9               JUDGE SIPPEL: Thank you.

10              BY MR. PHILLIPS:

11              Q       Mr. Solomon, besides programming  
12       rights, are there other ways that you compete  
13       with Comcast-owned sports channels?

14              A       Sure. All of the ways that  
15       networks compete. Probably the next most  
16       important one -- it's hard to say which is  
17       most important -- is advertising.

18              Advertisers decide who they are  
19       going to advertise on based on different  
20       thresholds of distribution, and you can  
21       imagine that when we are in under three  
22       million Comcast homes, and their owned

1 networks are in 23 million Comcast homes,  
2 combined with our other distribution, that  
3 that gives them a great advantage.

4 So it's -- you know, we -- a  
5 significant portion of the revenue that an  
6 emerging network generates comes from  
7 advertising, and it is the most important  
8 thing to an advertiser outside of the  
9 environment that their product is going to be  
10 marketed in, and clearly we have done very  
11 well in that regard with the Emmy wins. And  
12 they know that it's a Tiffany environment that  
13 gives great brand association.

14 It's how many people do you reach?  
15 And obviously, with limited reach, there are  
16 many advertisers who simply -- under 30  
17 million homes or under 40 million homes or  
18 under 50 million homes, simply won't place an  
19 order. And being blocked in, again, one of  
20 almost every four homes in the country, minus  
21 10 percent, creates a significant financial  
22 hardship.

1           Q       Well, now, Mr. Solomon, I bet when  
2       you go in to advertisers you don't tell them  
3       that you are just like the Golf Channel.  
4       After all, that is a different sport, right?

5           A       Well, no. Like most people, the  
6       closer you are as a competitor, probably the  
7       more you point out your differences. I think  
8       of Coke and Pepsi all the time, because those  
9       two companies have probably spent more money  
10      trying to prove how different they are, and I  
11      can't really tell the difference between them.

12                 But our job is to within our --  
13      one of the marketing jobs, and it depends, is  
14      to point out within our subset, you know,  
15      where our similarities are and where our  
16      differences are.

17           Q       Has your load distribution had any  
18      impact, do you think, on the sport of tennis?

19           A       Sure. Well, the sport itself is  
20      dramatically impacted. I mean, I think  
21      everybody who is in the business understands  
22      that the fate of a sport in this country is

1 largely tied to its fate on television. There  
2 was a time when the NFL was not doing so well  
3 in the late '90s, and it was because CBS was  
4 suffering, and they decided to move to Fox in  
5 order to do better. NASCAR became a huge hit  
6 when NBC and Fox took over.

7 The sport of tennis is in -- has  
8 been in a resurgence for the last 10 years.  
9 It is at an all-time -- nearly an all-time  
10 high in terms of playing. Over 30 million  
11 people are playing, more people are watching,  
12 ratings are up. Things are good.

13 But the limited distribution is  
14 obviously -- has a significant impact, and  
15 there is probably no other sports network that  
16 more represents its sport than ours, because,  
17 again, substantively every top hundred contest  
18 in the world, including all the year-end  
19 finals and the Davis Cup and the men's tour  
20 and the women's tour and the grand slams are  
21 on our air.

22 So tennis has suffered, and, more

1       importantly, the tennis fans have suffered,  
2       because, well, we get a lot of e-mails saying,  
3       "How come I have to pay for Tennis Channel or  
4       tennis just to see tennis, but I don't have to  
5       pay" -- and they take it out on us, because  
6       they think we are in charge -- "but I don't  
7       have to pay for golf, even secondary or  
8       tertiary golf, I don't have to pay for hockey  
9       or football or baseball. I don't have to pay  
10      for cage fighting. I don't want to see that.  
11      I want to see tennis."

12                   And so it does have a significant  
13      impact on the fortunes of the sport. And  
14      then, the other piece that obviously is the --  
15      may be the biggest of all is the distribution  
16      itself. The largest component of revenue for  
17      an emerging network, as just about anyone in  
18      the business knows, is the distribution  
19      revenue.

20                   And even though we have offered it  
21      at a much discounted rate, not being able to  
22      get -- being able to only get a fraction of

1       what Comcast is able to pay themselves  
2       obviously puts us at a competitive  
3       disadvantage if we are against Golf, Versus,  
4       and their other owned networks.

5               And that is probably -- and that  
6       ultimately manifests itself not only in cash  
7       but in terms of awareness. Our job is for  
8       people to be able to flip through the channels  
9       and see, hey, there -- maybe it's a golf  
10      tournament if they want to see a golf  
11      tournament, maybe it's a tennis tournament if  
12      they want to see a tennis tournament. If they  
13      flip through and they can't see it, they don't  
14      know it's there. And if you say to them,  
15      "Gee, I have to pay \$5 or \$6 to get it, that  
16      makes it a much higher hurdle than just  
17      turning the channel."

18              MR. PHILLIPS: Your Honor, I have  
19      a couple of questions just about specifics,  
20      the specific numbers on the offers made. And  
21      it -- but those are things I can't do in  
22      public session.



1 JUDGE SIPPEL: All right. Well,  
2 I'll address that in just a minute. Let me  
3 ask just one question here. I try and figure  
4 out, how does this premium get charged? If a  
5 customer is going to be a customer of Comcast,  
6 that for one reason or another wants to see  
7 The Tennis Channel, they don't contact The  
8 Tennis Channel, I guess they contact Comcast,  
9 is that right?

10 THE WITNESS: That's correct. The  
11 way it works is that Comcast offers a variety  
12 of packages. Every month when you get your  
13 Comcast bill, they presumably say you can buy  
14 this one, this one, this one, or this one.  
15 The package The Tennis Channel is on, which  
16 doesn't have any other -- any Comcast sports  
17 networks on it at all, but it's called a  
18 sports tier, ironically -- they say to you,  
19 "Next month, if you want this, give us \$5 or  
20 \$6 more a month."

21 What is interesting is we are only  
22 charging 15 cents or less, and yet it would

1 cost you \$5 a month to get the sports package  
2 to get --

3 JUDGE SIPPEL: You are charging  
4 Comcast --

5 THE WITNESS: We are charging  
6 Comcast --

7 JUDGE SIPPEL: -- 15 cents or  
8 less.

9 THE WITNESS: -- 15 cents and  
10 they want to charge \$5.

11 JUDGE SIPPEL: Is this okay to  
12 talk -- like about this? Is this okay?

13 THE WITNESS: Well, I think those  
14 numbers have been published before, so -- I'm  
15 using 15 cents as a round number. It has been  
16 published.

17 MR. PHILLIPS: To talk about the  
18 further details of that, Your Honor -- and I  
19 hate to do it -- I'm sorry -- but I --

20 JUDGE SIPPEL: No, no, no, no,  
21 that's okay. I'm sorry myself. I didn't mean  
22 to pry that deeply. But I'm just trying to

1 figure out, how does this work. So it -- I'm  
2 going to ask one more question.

3 MR. PHILLIPS: Well, that's --  
4 Your Honor, the stage is yours. It's as big  
5 as you want.

6 JUDGE SIPPEL: Is it a la carte?  
7 For five bucks more you can get -- for five  
8 bucks more a month, right?

9 THE WITNESS: Correct.

10 JUDGE SIPPEL: You can get tennis  
11 games, but does that mean that you've got to  
12 get a whole bunch of other things, or are they  
13 a la carte?

14 THE WITNESS: Yes, it does. It's  
15 not a la carte. You get soccer and some other  
16 channels, but -- that Comcast does now.

17 JUDGE SIPPEL: Okay. All right.  
18 I'm sorry. That's it for me.

19 Let's go into closed session.

20 MR. PHILLIPS: It's a closed  
21 session, but it's really only a couple of  
22 questions. And I just want to get on the

1 record the further details of the price.

2 JUDGE SIPPEL: That's fine.

3 Everybody here who is not covered by the  
4 protective order, would they please excuse  
5 themselves? It's supposed to be for five  
6 minutes, but that never works out.

7 (Whereupon, the proceedings in the  
8 foregoing matter went into closed  
9 session at 2:25 p.m.)

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CLOSED SESSION

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q Mr. Solomon, the offer that you made to Comcast in May of '09, can you describe it for me in detail and give the prices?

A Sure.

, and the -- we give what we call volume discounts in the business. So the more subscribers you give us, the less you have to pay per subscriber.

In this particular case, even though we were already among the cheapest, if not the very least expensive -- I think there might be one or two more that are less expensive, but certainly nowhere near the value proposition that we are offering for that price -- we said to Comcast in that meeting that we would offer them either a mid-level of distribution at about per

1 subscriber, so a significant discount, and if  
2 they wanted to virtually double that level of  
3 distribution, give or take a million or a  
4 couple million homes, to the highest level we  
5 were asking for which is not the highest  
6 level. We were asking for I think at the  
7 time, what was it, about  
8 homes on that one, and the mid-level was about  
9 half that.

10 We would drop it down to about  
11 per subscriber making it about  
12 half what the normal rate card was. In real  
13 numbers, that would be a significant discount  
14 from where we had been off our already low  
15 prices. And, again, some of that benefit  
16 would trickle far beyond Comcast to our other  
17 distributors.

18 Q Do you know how much, on an  
19 annualized basis, that and  
20 would turn out to be for Comcast?

21 A Yeah, it -- you know, the big  
22 question that we were trying to answer is, how

1 can we make sure this is an offer they can't  
2 refuse? Matt had made it clear that we had to  
3 make it seem very attractive to him.

4 And so the first thing we did is  
5 we did our homework. There are regularly  
6 published pricing on all of the networks that  
7 are out there, and they are close. They are  
8 not perfect, but they are close enough that  
9 most of the industry basis -- a lot of it is  
10 revenue analyses on them.

11 And here is why we thought it was  
12 going to be great. Just make sure that door  
13 closes. For the industry published  
14 information, it said that during 2010 Comcast  
15 was going to pay itself about

16 to carry Versus. They were going to  
17 pay themselves about to carry Golf  
18 Channel, just for the 2010 year.

19 Our offer meant that if they gave  
20 us the mid-level of distribution, it would be  
21 about . And if it were the higher  
22 level of distribution, it would be about

1                   , I think                   , something  
2       like that.

3                   So we looked at this not only as a  
4       significant discount off what the rate would  
5       have been anyway, which was already  
6       inexpensive, but also, again, a fraction of  
7       what they were paying themselves for networks  
8       that were similar, if not slightly inferior.

9                   And the other thing was --

10                  JUDGE SIPPEL: Could you give me  
11       those numbers again?

12                  THE WITNESS: Sure.

13                  JUDGE SIPPEL: With Versus, Versus  
14       was how much, how many million?

15                  THE WITNESS: About  
16       , give or take, for 2010.

17                  JUDGE SIPPEL: Okay.

18       in 2010.

19                  THE WITNESS: And those rate cards  
20       are fixed, so they are paying themselves  
21       presumably what they are paying other people,  
22       we would assume.



1 JUDGE SIPPEL: Right. And Golf  
2 was how much?

3 THE WITNESS: Golf was about .

4 JUDGE SIPPEL: .

5 THE WITNESS: For the year.

6 JUDGE SIPPEL: For 2010.

7 THE WITNESS: Correct.

8 JUDGE SIPPEL: Thank you.

9 THE WITNESS: We offered one offer  
10 of and one offer of .

11 JUDGE SIPPEL: I see that. Those  
12 numbers I have, okay.

13 THE WITNESS: Okay? The only  
14 other thing was that we already had a bunch of  
15 other incentives, like Matt was asking for,  
16 that were already on the table that they could  
17 continue to enjoy, one of them being the  
18 , and that there was still  
19 left on the contract.

20

21

22 . It's

1 a good deal for them. It's real cash out the  
2 door for us, but something that we are willing  
3 to do.

4 They would continue to enjoy that  
5 for some time, and they had other  
6 incentives, like there is a  
7 that we were required to pay Comcast, a  
8 subsidiary of Comcast called CMC, which is  
9 their technical facility, whether we availed  
10 ourselves of any of those services or not. I  
11 don't know that we ever have. We may have  
12 used some of them, but it's not something that  
13 we really needed, but we were required to pay  
14 them. All those would continue to remain in  
15 effect -- in effect discounts off the price  
16 that we had already offered them.

17 JUDGE SIPPEL: How much would CMC  
18 cost you?

19 THE WITNESS: About  
20 overall.

21 JUDGE SIPPEL: Thank you.

22 BY MR. PHILLIPS:

1           Q       Mr. Solomon, I really only have  
2       one more question for you, which is, what are  
3       you hoping to achieve by this lawsuit, sir?

4           A       Well, all we really want to do is  
5       level the playing field. I mean, our goal is  
6       to compete effectively against our competitive  
7       networks. And our competitive networks happen  
8       to be owned largely by our -- what could be  
9       potentially our largest distributor and is the  
10      largest distributor in this country.

11                 We think we have a great business.  
12      We think we can bring us both great value, but  
13      we can't do it unless we are treated the same  
14      way they treat their own. So we are hoping  
15      that we can effectuate that and move on and  
16      have a great relationship with Comcast and  
17      make everybody happy.

18           Q       What if they move Golf and Versus  
19      up to a more narrowly restricted tier?

20           A       That would be fine. All we have  
21      ever asked for is to be treated the same.  
22      There is really no separate but equal in this,

1       and we have kind of lived that time and again.  
2       And if they felt that the best business place  
3       to put sports networks like Golf, Versus, and  
4       Tennis Channel were on the tier that we're on  
5       now, then that would be what we would live  
6       with.

7               Q       And how would that help you, to be  
8       on a tier with further -- with more channels  
9       on it?

10              A       Well, obviously, it would bring  
11       more attention to it. Comcast would probably  
12       spend more time marketing the sports tier  
13       because their own network would be on it, and  
14       we think they could do very well because they  
15       could sell the two of them together. Comcast  
16       gets a lot of local time in Tennis Channel if  
17       they do this, and it seems like golf and  
18       tennis would be a perfect thing for them to  
19       put together and market together. It seems  
20       like a natural -- and, frankly, many, many,  
21       many other distributors have done it just that  
22       way.

1 MR. PHILLIPS: Mr. Solomon, thank  
2 you very much.

3 Your Honor, I don't have any  
4 further questions.

5 JUDGE SIPPEL: Well, let me just  
6 get a couple of clarifications. Was there any  
7 offer of an equity position in Tennis Channel  
8 made to Mr. Bond or to -- in those  
9 negotiations?

10 THE WITNESS: Not in the  
11 negotiations were just discussing. It wasn't  
12 asked for, and it wasn't rejected or  
13 proffered. There had been in the past,  
14 because of our Most Favored Nations  
15 requirements, the offer of increased  
16 distribution and the opportunity to trade free  
17 period for equity on a similar basis to the  
18 way those -- the Dish deal and the DirectTV  
19 deal had happened. But those were not at the  
20 same time as the meetings in 2009.

21 JUDGE SIPPEL: Those were prior  
22 discussions and that subject --

1 THE WITNESS: Correct.

2 JUDGE SIPPEL: -- never came up  
3 again like in --

4 THE WITNESS: It didn't come up  
5 during these discussions.

6 JUDGE SIPPEL: Okay. And how was  
7 the decision made, or who made -- well, how  
8 was the decision made, just what are the  
9 dynamics that you were going to -- that this  
10 has reached the point where you decide you are  
11 going to sue Comcast? When I say "you," I  
12 mean, you know, Tennis Channel.

13 THE WITNESS: Sure. Well, we --  
14 as we told them many times, it's the last  
15 thing we wanted to do. We got to that point  
16 when, on Mr. Bond's rejection of what we felt  
17 was an offer that he encouraged us -- clearly  
18 encouraged us to make, that he not only said  
19 no, but refused to negotiate.

20 At that point, when you had all  
21 four grand slams, every top hundred  
22 tournament, had done everything they asked

1       for, offered them a significant price discount  
2       over our already inexpensive price, we  
3       realized it didn't matter what we would do.  
4       They were never going to move us, and it  
5       became clear that the decision had been made  
6       before we even started these discussions, and  
7       that we were just being led down the path.

8                 At that point, we had nothing to  
9       lose, because we weren't being treated the  
10      same and it didn't matter what we did. They  
11      don't make a fifth grand slam, so we couldn't  
12      get that. And we just said, "There is no  
13      other choice. We might as well see -- we  
14      think there is a difference of agreement here.  
15      We have to see if it will get settled fairly,"  
16      because it seemed clear to us that we weren't  
17      getting fair treatment or similar treatment to  
18      what they were doing for themselves.

19                JUDGE SIPPEL: So after the loss  
20      -- well, I'm not going to ask that question.  
21      But I'm talking about the dynamics of -- did  
22      you have to have a special meeting of the

1 Board of Directors, or just a meeting of the  
2 Board of Directors, to discuss this with the  
3 Board members?

4 THE WITNESS: Very much. Very  
5 much. We talked to the Board. When we talk  
6 about distribution matters with our Board, two  
7 of our Board members are also members of  
8 distribution companies, and they recused  
9 themselves.

10 But at that point, I think the  
11 Board was -- who are very savvy in the matters  
12 of cable companies, they are either former  
13 executives who have had experience with cable  
14 in some cases, or private equity investors who  
15 are media savvy, and were frustrated, were  
16 disappointed, and felt that we had no other  
17 alternative. So that's not a unilateral  
18 decision I would make without consulting the  
19 Board.

20 JUDGE SIPPEL: Okay. Thank you.

21 MR. PHILLIPS: Your Honor, may I  
22 follow up on one question you asked?



1 JUDGE SIPPEL: Sure.

2 BY MR. PHILLIPS:

3 Q Just to be very clear, you said,  
4 Mr. Solomon, I believe, that some of your  
5 Board members recused yourselves on things  
6 like distribution issues or lawsuits about  
7 distribution issues. Could you tell me which  
8 Board members those are who recused  
9 themselves?

10 A Sure. Two of our 10 Board  
11 members, so one of them is Dan Hartman, who  
12 works at DirecTV, and one of them is Caroline  
13 Chang, who works -- Caroline Crawford, sorry,  
14 who works at Dish Network.

15 Q And they recused themselves from  
16 anything having to do with distribution  
17 issues?

18 A Yes.

19 MR. PHILLIPS: Thank you.

20 JUDGE SIPPEL: And Mr. Hartman was  
21 where?

22 THE WITNESS: He is at DirecTV.

1 JUDGE SIPPEL: Thank you. Thank  
2 you. That's all.

3 Mr. Carroll, your witness, sir.

4 MR. CARROLL: Thank you, Your  
5 Honor.

6 Now, I've got a lot to ask Mr.  
7 Solomon. I guess I should do the numbers  
8 piece first.

9 JUDGE SIPPEL: Okay. So we're not  
10 going to bring anybody back in again.

11 MR. CARROLL: If I get rid of the  
12 numbers piece now --

13 JUDGE SIPPEL: I agree with you.

14 MR. CARROLL: -- it seems to me  
15 that's the most efficient way.

16 JUDGE SIPPEL: I agree. Thank  
17 you, I agree.

18 MR. CARROLL: So I want to follow  
19 up on this lawsuit piece. I want to follow up  
20 on this meeting. It would be the natural  
21 thing for me to do, Your Honor. I'm just  
22 going to hold those for one second, and I'm